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19

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

22 CORY SPENCER, an individual;
23 DIANA MILENA REED, an
individual; and COASTAL
24 PROTECTION RANGERS, INC., a
25 California non-profit public benefit
corporation,

27 Plaintiffs,
28

CASE NO. 2:16-cv-02129-SJO (RAOx)
**PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: February 21, 2017
Time: 10:00 a.m.
Judge: Honorable S. James Otero
Ctrm.: 10C
1st Street Courthouse

1 v.

2 LUNADA BAY BOYS; THE
3 INDIVIDUAL MEMBERS OF THE
4 LUNADA BAY BOYS, including but
not limited to SANG LEE, BRANT
5 BLAKEMAN, ALAN JOHNSTON
6 AKA JALIAN JOHNSTON,
MICHAEL RAE PAPAYANS,
7 ANGELO FERRARA, FRANK
FERRARA, CHARLIE FERRARA,
8 and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
9 KEPLEY, in his representative
capacity; and DOES 1-10,

10
11 Defendants.
12

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

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NOTICE OF MOTION

Please take notice that on February 17, 2017, at 10:00 a.m. before the Honorable Judge S. James Otero, United States District Court, Courtroom 10c, 350 W. 1st Street, Los Angeles, California 90012, Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc. ("CPR") (collectively, "Plaintiffs") will seek an order certifying this case as a class action under Federal Rule of Civil Procedure 23(b)(2) and/or Rule 23(b)(3) as to all Defendants in this matter.¹ Plaintiffs' Motion For Class Certification is based upon this notice of motion and motion, the memorandum of points and authorities, accompanying declarations, and other briefing and arguments of counsel.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on December 16, 2016. (See Decl. Franklin, ¶¶ 11-13, Ex. 3.)

I. INTRODUCTION AND SUMMARY

14 Class actions are a tool for efficiently resolving claims that warrant systemic
15 reform. This is such a case. Plaintiffs bring this civil rights lawsuit and seek class
16 certification under Rules 23(b)(2) and 23(b)(3).

17 Each of the Individual Defendants is a member of the Lunada Bay Boys gang.
18 Like other gangs, they protect their "turf" from outsiders. And, they use secrecy as
19 they conspire to guard their territory. To protect "their" beach they use fear,
20 violence, and intimidation. Supported by neighbors and police with whom they
21 grew up, they use behavior learned from the "older boys" who "made up the rules
22 [and] term[s] of engagement" decades ago. (Decl. Otten, Ex. 3.) Because it has the
23 likeminded intent on keeping the City of Palos Verdes Estates ("City") exclusive "to

²⁵ ¹ The Individual Defendants are Sang Lee, Brant Blakeman, Alan Johnston AKA
²⁶ Jalian Johnston, Michael Rae Papayans, Angelo Ferrara, Frank Ferrara, Charlie
²⁷ Ferrara, and N. F. In addition, Plaintiffs name the City of Palos Verdes Estates (the
"City") and Chief of Police Jeff Kepley as Defendants.

1 protect this utopian landscape and future property values" consistent with the local
 2 Palos Verdes Homes Association, for more than 40 years the City has not taken
 3 action against the Bay Boys. (*See id.* at Ex. 22.) But for visiting beachgoers,
 4 Lunada Bay is far from "utopia."

5 By law, in this state the public beaches belong to all, not just the wealthy
 6 locals who lay claim to Lunada Bay. Yet for decades, the City of Palos Verdes
 7 Estates and the Lunada Bay Boys have eliminated public access except for a select
 8 few. With this civil rights lawsuit, Plaintiffs' goal is to stop the decades of bullying
 9 and other illegal activity and return Lunada Bay to the public.

10 Plaintiffs meet the prerequisites for class certification:

- 11 • **Numerosity.** Plaintiffs ask to represent many thousands of people who have
 12 been, and continue to be denied, access to Lunada Bay. There are over
 13 3,000,000 surfers in the United States, an estimated 1,000,000 surfers in
 14 Southern California, and an estimated 238,000,000 visitor days² to
 15 California's beaches each year. But due to localism, fewer than 100 surfers
 16 regularly use Lunada Bay without being harassed.
- 17 • **Commonality and Typicality.** The Plaintiffs' claims are similar to those of
 18 the class: they want to safely visit Lunada Bay free from harassment. The
 19 class consists of out-of-area beachgoers who want to visit and recreate in
 20 Lunada Bay without being harassed. The Plaintiffs and the Class Members
 21 have been, and continue to be, deprived the opportunity to enjoy the
 22 recreational opportunities and beauty of Lunada Bay by virtue of the Bay
 23 Boys' unlawful conduct.
- 24 • **Adequacy.** The named representatives are dedicated beachgoers who will
 25 prosecute the action vigorously through qualified counsel.
- 26 • **Incidental Damages.** The Plaintiffs seek incidental non-individualized
 27 monetary damages. By applying an economic recreation value, Plaintiffs

25 ² The number of "visitors" to a beach is the number of unique individuals who visit
 26 the beach in a given year. A visitor-day, in contrast, is the total number of all-day
 27 visits by everyone. For beach count studies, attendance is typically kept in visitor-
 days as opposed to identifying unique individual visitors.

1 preliminarily estimate damages at \$50 to \$80 per visit for each class member.
 2 In sum, Plaintiffs suffered threats, intimidation, and assault. Their efforts to
 3 seek redress from the City went unanswered. Their experiences are like those of
 4 other members of the class. (*See*, Section II.B, *supra*; see also Decl. Otten, ¶ 23
 5 (additional witnesses are too afraid to submit declarations for fear of retribution by
 6 Bay Boys). As more fully explained below, Plaintiffs ask the Court to grant this
 7 class certification motion and name Hanson Bridgett LLP and Otten Law PC as
 8 class counsel.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. Lunada Bay – One of the World's Most "Localized" Beaches.**

11 Established in 1923 and located on the Palos Verdes Peninsula on the south
 12 end of Los Angeles County, the City is well known for its exclusivity. (*See, e.g.*,
 13 Decl. Akhavan, ¶ 15.) It is also the only city on the Palos Verdes Peninsula with its
 14 own police department. (Decl. Otten, Ex. 1 at 121:5-6.)

15 Lunada Bay is a City-owned beach purportedly open to the public. (Decl.
 16 Otten, Exs. 16 at 106:22-107:5 & 1 at 21:18-24.) In addition to its striking views,
 17 Lunada Bay is known around the world for good surf. (*See, e.g.*, Expert Decl. P.
 18 Neushul, ¶ 13; Expert Decl. King, ¶ 15.) Lunada Bay's waves often reach as high as
 19 15 to 20 feet during prime season. (Decl. P. Neushul at ¶ 17.) Lunada Bay can host
 20 a barreling right-breaking, rock-reef point-break type wave and hold a large swell.
 21 (*Id.* ¶ 13.) Lunada Bay is also known for its sheer cliffs, pristine shoreline, beautiful
 22 tide pools, and unspoiled shoreline adjacent to hiking trials. (*Id.*; Decl. King, ¶ 16.)

23 Given Lunada Bay's proximity to densely-populated Los Angeles, its natural
 24 beauty, and the unique beach recreation that it offers, one would expect Lunada Bay
 25 to be a popular destination for visitors. But it is not. (Decl. King, ¶ 17.) Even
 26 though it is a public beach, Luanda Bay is available to few.

27 Consistent with a practice known in surf culture as "localism," the Bay Boys
 28 employ a campaign of harassing conduct toward "outsiders" for the purpose of

1 excluding them from Lunada Bay. (Decl. P. Neushul, ¶¶ 14, 17.) Through this
 2 behavior, the Bay Boys have a reputation for barring out-of-town would-be
 3 beachgoers from "their turf" through "localism." (*Id.* ¶ 17; Decl. Sisson, ¶ 4; Will,
 4 ¶ 4; K. Claypool, ¶ 3; Carpenter, ¶ 5.)

5 **B. The Bay Boys Conspire to Exclude Outsiders Under a Set of Rules
 Established in the 1970s.**

7 As part of the Bay Boys, the Individual Defendants take great pride in
 8 purging Lunada Bay of visitors. (*See* Decl. P. Neushul, ¶ 16.) The Bay Boys state
 9 that they protect "their turf" at all costs and "WILL DIE BY" the set of "rules" and
 10 "term[s] of engagement" that they established in the 1970s. (Decl. Otten, Ex. 3
 11 (emphasis in original).) Defendant Charlie Ferrara explained to Plaintiff Reed that
 12 the Bay Boys are "like a fraternity": they haze those who seek to join, including
 13 making them "drink frickin' piss to see how bad you want to be in this fraternity."
 14 (Decl. Reed, Exs. 5, 6.) The Bay Boys are "family members," friends, and
 15 "pirate[s]." (Decls. Otten, Ex. 3; Hagins, Ex. 6 (Frank Ferrara referring to "pirates"
 16 of Lunada Bay).) To the Bay Boys, Lunada Bay "is not just a surf spot" but it is
 17 their "church/home/sanctuary/temple" and they are "not going to share it." (Decl.
 18 Otten, Exs. 3, 4, emphasis omitted.)

19 The Bay Boys employ various "options to deterr [sic] outsiders from surfing
 20 our home." (Decl. Otten, Ex. 5.) Their goal is to repel visitors by making them
 21 miserable that they never return. As Charlie Ferrara stated, "I can't tell you that you
 22 can't go surfing, but what I can do is make sure you don't have fun out there . . .
 23 [a]nd then what's the point of that? You're going to come here when the surf's good
 24 everywhere else and get bummed and have a bad day?" (Decl. Reed, Exs. 5, 6.)
 25 The Bay Boys "do not feel guilty" excluding visitors from Lunada Bay because they
 26 believe it "was ours in the first place." (Decl. Otten, Ex. 4)

27 These words have been put into action for decades and visitors have
 28 experienced a long history of intimidation, assault, battery and vandalism, among

1 other crimes:

- 2 • Bay Boys harass visitors immediately upon their arrival to Paseo Del Mar, the
3 street that parallels the bluffs above Lunada Bay. (Decls. Spencer, ¶ 11; K.
4 Claypool, ¶ 18; Taloa, ¶ 20; Reed, ¶ 8; Bacon, ¶¶ 4-5; Gero, ¶¶ 6, 9-11.)
- 5 • Visitors who take photographs are blocked, told they cannot photograph local
6 surfers or waves, and/or are interrogated. (Decls. Innis, ¶ 4; Reed, ¶ 20.)
- 7 • Visitors' cars are vandalized. Their windows are covered in surfboard wax,
8 derogatory words are scrawled across their windshield. (Decls. Jongeward, ¶
9 6; K. Claypool, ¶ 6; Carpenter, ¶ 9.) The air in their tires is let out or their
10 tires are slashed. (Decls. Young, ¶ 11; K. Claypool, ¶ 6; Bacon, ¶ 7; Gero, ¶
11 7.) Dog feces is smeared on vehicles, door panels are kicked in, windshields
12 are scored, paint is damaged by keys, and taillights and mirrors are broken.
(*Id.*; Decl. Pastor, ¶ 8.) Visitors hire security guards to watch their cars while
13 they surf or stand guard over friends' vehicles. (Decl. Spencer, ¶¶ 10, 21.)
- 14 • Bay Boys block the paths to the beach and shout at visitors, call them "kooks"
15 (a derogatory surfing term), ask them what they're doing there, and tell them
16 to "fucking go home." (Decls. Jongeward, ¶ 4; Spencer, ¶ 11; Wright, ¶ 8;
17 Young, ¶ 6; Conn, ¶ 6; Taloa, ¶ 19; Reed, ¶¶ 8, 9, 19; Will, ¶ 7.) Bay Boys
18 tell visitors "it's really dangerous," "you shouldn't surf here," and "the people
19 out there will make sure you don't have fun." (Decl. Wright, ¶ 8.) Some
20 surfers are punched in the face and told "[t]his is my fucking house and my
21 fucking yard." (Decl. Akhavan, ¶ 9.) Bay Boys stand guard while others
22 assault visitors. (*Id.* ¶ 12.)
- 23 • Boy Boys like Defendant Blakeman stand within several feet of visitors
24 holding a camera in their face and film them in a harassing manner while on
25 the bluffs, walking down the trail, on the beach, and in the Rock Fort. (Decls.
26 Wright, ¶¶ 8, 18; K. Claypool, ¶¶ 25, 28; Reed, ¶¶ 9, 21; C. Claypool, ¶ 12.)
- 27 • Bay Boys pelt visitors with rocks, dirt clods, and glass while they navigate the
28 steep and unmarked paths from the bluffs to the shoreline. (Decls.
Jongeward, ¶ 6; Pastor, ¶ 4; Conn, ¶ 7; S. Neushul, ¶ 8; Gersch, ¶ 5; Gero, ¶ 8;
Perez, ¶ 4.)
- Bay Boys hurl obscenities at visitors, calling them "whores" and "fucking
faggots," and dare them to go in the water "and see what happens." (Decls.
Wright, ¶¶ 13, 19; Young, ¶ 9; K. Claypool, ¶¶ 5, 20; Reed, ¶ 11.)
- Visitors in the water are encircled by Bay Boys, including Defendants
Blakeman, Papayans, Lee, Charlie Ferrara, and Johnston, among others, who
intentionally obstruct visitors' movements, shadow them, block them from

surfing, yell racially-charged insults, tell them they're "not fucking welcome," "get the fuck out of here," "we'll beat your ass," drop in on them while surfing, intentionally collide with them, shoot surf boards, and put them at great risk. (Decls. Spencer, ¶¶ 12-14; Taloa, ¶¶ 18, 20; S. Neushul, ¶¶ 9, 11; Pastor, ¶ 5; Jongeward, ¶ 8; Wright, ¶¶ 9, 11-12, 18; Young, ¶¶ 7-8; K. Claypool, ¶¶ 5, 9, 13, 23-24; MacHarg, ¶¶ 6-7; Will, ¶ 8; Carpenter, ¶ 8; Marsch, ¶ 3; C. Claypool, ¶¶ 9, 11.)

- Bay Boys provoke visitors to throw the first punch through extreme harassment and intimidation. (Decls. Taloa, ¶ 19; MacHarg, ¶¶ 5-7.) Bay Boys then become physically violent with self-proclaimed impunity. (Decl. Otten, Ex. 5.)

These unlawful acts are well organized and coordinated via email and text. (Decls. Spencer, ¶ 22; Wright, ¶ 8.)

The Bay Boys also rummage through social media to watch for visitors who try to organize surf outings to Lunada Bay. (Decl. K. Claypool, ¶ 19.) In January 2014, through his Facebook page "Aloha Point," Christopher Taloa organized a peaceful surf outing for visitors who desired to safely surf Lunada Bay. (*See* Decl. Spencer, ¶ 7; Taloa, ¶ 17.) This surf outing was planned for Martin Luther King, Jr. Day – January 20, 2014. (*Id.*) Bay Boys tracked Taloa's Aloha Point Facebook page and circulated notification of the event via email on January 16, 2014 "to the whole crew so everyone knows and we can all be on the same page." (Decl. Otten, Ex. 4.) Bay Boy Charlie Mowat, who received this email along with Defendant Lee and 18 others, responded, "I will be on the patio alllllllllll [sic] day on Monday throwing out heckles and sporting a BBQ. I'm already warming up. Don't miss the fun." (*Id.*; *see also* Decl. Otten. Ex. 6.) Defendant Lee also reminded 26 friends via email on January 17, 2016 that "everyone should all try to surf this coming Monday." (Decl. Otten, Ex. 7.) The day of the event, a Bay Boy harangued Taloa by wearing "Blackface" and wearing an Afro wig after getting ready at Defendant Angelo Ferrara's house. (Decls. Taloa, ¶ 17; Otten, Ex. 8 at 165:8-18.) Other Bay Boys were present, kicking visiting surfers under the water and shouting that they "don't pay enough taxes to be here." (Decl. Taloa, ¶ 17.) Defendant Johnston

1 verbally harassed and kicked Taloa in the water. (*Id.*)

2 The Bay Boys also coordinated via text message upon learning of this lawsuit.
3 Bay Boy Mowat, Defendant Johnston, and eight others, including someone believed
4 to be Michael Thiel, said that this lawsuit was "[p]robably [brought by] that Diana
5 bitch" and cautioned everyone "to be on the ultra down-low." (Decls. Otten, Ex. 9;
6 Franklin, ¶ 10 & Ex. 1.) Another on the group text, who is believed to be David
7 Hilton, chimed in: "[t]here is hopefully no evidence that those named barred the
8 plaintiffs from going surfing and no proof of any physical or economic damage."
9 (Decls. Otten, Ex. 9; Franklin, ¶ 10 & Ex. 2.)

10 **C. The Plaintiff Class Representatives Suffered Violence, Intimidation,
11 Harassment and Exclusion by the Lunada Bay Boys.**

12 Plaintiffs Spencer's and Reed's experiences mirror those of other visitors.
13 Growing up, Plaintiff Spencer desired to surf Lunada Bay for decades but avoided it
14 out of fear of the Bay Boys. (Decl. Spencer, ¶¶ 3-4.) When he finally surfed
15 Lunada Bay in January 2016, the Bay Boys' harassment began immediately upon his
16 arrival. (*Id.*, ¶ 11.) He was called a "kook" and told to "fucking go home." (*Id.*) In
17 the water, he was shadowed by Defendant Blakeman who impeded his movement in
18 any direction and prevented him from catching waves. (*Id.*, ¶ 12.) Another Bay
19 Boy maneuvered his surfboard directly toward Spencer, slicing Spencer's wrist.
20 (*Id.*, ¶ 13.) Both Blakeman and the other Bay Boy were communicating with each
21 other and other Bay Boys in the Rock Fort that morning. (*Id.*, ¶ 16.) Spencer
22 notified City police in advance of his arrival seeking extra patrols but none were
23 present in the water, along the shoreline, or near the Rock Fort so these incidents
24 went unnoticed. (*Id.*, ¶ 17.) Spencer returned a week later, only to be harassed
25 again. (*Id.*, ¶¶ 21-23.)

26 Plaintiff Reed also first visited Lunada Bay in January 2016. (Decl. Reed,
27 ¶ 7.) She, too, was immediately harassed upon her arrival at Lunada Bay on January
28 29, 2016, called a "kook," and told she couldn't surf there. (*Id.*, ¶ 8.) Blakeman

1 filmed Reed on the bluffs and made her feel uncomfortable. (*Id.*, ¶ 9.) When she
2 walked down to the beach, Bay Boy David Mello screamed "whore" and other
3 profanities at Reed while City police witnessed the incident but did not intervene.
4 (*Id.*, ¶¶ 11-12.) After the incident, a City policeman asked Reed if she wanted to
5 make a citizen's arrest. (*Id.*, ¶ 13.) When she said she did, the officer discouraged
6 her from doing so. (*Id.*, ¶ 14.)

7 Reed returned to Lunada Bay in mid-February 2016 to take photos while her
8 friends surfed. (*Id.*, ¶ 18.) Upon her arrival, she was again filmed by Blakeman and
9 told that she was "done." (*Id.*, ¶ 19.) Later that morning, Defendant Charlie Ferrara
10 watched Defendants Blakeman and Johnston rush into the Rock Fort toward Reed in
11 a hostile manner. (*Id.*, ¶ 21.) Johnston was loud, seemed drunk, sprayed beer on
12 Reed, said she was "fucking sexy baby," that he was "big enough to get the job
13 done," and mimicked an orgasm. (*Id.*, ¶ 24.) He exposed his penis to her while
14 changing into his wetsuit. (*Id.*) Blakeman filmed the incident and kept the camera
15 close to Reed. (*Id.*, ¶ 21.) When she asked why he was filming her, he responded
16 "because I feel like it." (*Id.*, ¶ 22.)

17 Reed complained to the police who instantly identified Blakeman. (*Id.*, ¶ 27.)
18 The police also knew Charlie Ferrara. (*Id.*, ¶ 28.) A policeman who took a written
19 report told Reed that the police have a "book containing driver's license photographs
20 of all Lunada Bay Boys" that she could use to identify the third Bay Boy. (*Id.*, ¶
21 29.) But no one from the City Police Department followed up, despite Reed's
22 repeated efforts to contact them. (*Id.*, ¶ 30.) Finally, after she retained an attorney
23 who facilitated a meeting with Chief Kepley and Captain Velez, she was still told
24 she could not review photos and that Lunada Bay was unsafe. (*Id.*, ¶ 31.)

25 CPR is a nonprofit dedicated to ensuring beach access for the public and
26 environmental justice. (Decl. Slatten, ¶¶ 6, 10.) CPR believes all visitors should be
27 able to visit Lunada Bay without fear of attack or vandalism. (*Id.*, ¶ 12.)

28 / / /

1 **D. The City and Chief Kepley Are Complicit in the Bay Boys' Bad Acts.**

2 The City and its Police Department are long aware of the Bay Boys targeting
3 visitors for exclusion. (*See, e.g.*, Decl. Otten, Ex. 10.) The City and Police may say
4 they do not tolerate the Bay Boys' behavior, but then they fail to address the
5 problem. (Decl. Sisson, ¶ 8.) Other times, City officials dismiss the Bay Boys and
6 localism as "urban legend." Ultimately, this "legacy problem" persists unabated.
7 (Decl. Otten, Ex. 11.)

8 City employees, including a police dispatcher, admit a problem exists but do
9 little more than caution visitors:

10 We know all of them. They are infamous around here.
11 They are pretty much grown men in little mens' mindset.
12 They don't like anyone that's not one of the Bay Boys
13 surfing down there. It literally is like a game with kids on
14 a schoolyard to them. And they don't want you playing on
15 their swing set. But, you know, it is what it is. If you feel
16 uncomfortable, you know, then don't do it.

17 (Decl. Otten, Ex. 12.) Police Chief Kepley "acknowledge[d] [he has] much work to
18 do here with these bullies, and [that] this has been going on intermittently for
19 probably fifty years." (Decl. Otten, Exs. 20, 1 at 62-65.) Chief Kepley even agreed
20 that there "may be some truth" to the fact that the Bay Boys are "like an organized
21 street gang." (*Id.*) Chief Kepley advised the City Council that he was considering
22 "making contact with the surfers" but was hesitant to do so for fear of "alienat[ing]
23 many of our long-term residents." (Decl. Otten, Ex. 13.)

24 The City officials' feigned pledges to eradicate the Bay Boys always give way
25 to its concern with public image. (*See, e.g.*, Decl. Otten, Ex. 14 (City rejected
26 Assemblyman's offer of state resources to address localism because the "attention
27 might even cause more unwanted publicity").) When Chief Kepley was first
28 exposed to the localism problem at Lunada Bay as the new Chief, he condemned the
29 Bay Boys' unlawful acts of exclusion. He stated that "[h]opefully, it won't take that
30 long to resolve, but I think it's very important to get the word out as aggressively
31 and enthusiastically as we can that the status quo is going to be mixed up around

1 here.'" (Decl. Otten, Ex. 1 at 50:2-51:16.) Chief Kepley cautioned: "We will make
2 an example out of anyone who behaves criminally down there." (*Id.* at 54:8-14.)

3 Chief Kepley's comments were not well-received. The Palos Verdes Estates
4 community, including Bay Boys Charlie Mowat, Michael Thiel, and Michael S.
5 Papayans, sent letters and/or emails to the City Manager questioning the Chief's
6 motives and demanding his resignation. Mowat was "outraged" by the Chief's
7 efforts to "railroad[] the local surfers that have policed and protected these shores
8 for over 5 decades!" (Decl. Otten, Exs. 17, 1 at 70-74.) Thiel questioned the Chief's
9 public statements and efforts to address the "surfing issues in Lunada Bay." (Decl.
10 Otten, Exs. 18, 1 at 194:13-195:13.) And Michael S. Papayans "voice[d] [his]
11 disgust with the way our police resources are being utilized by the current police
12 chief Kepley." (Decl. Otten, Exs. 19, 1 at 77-79.) He was concerned that "with
13 [Kepley's] words written in the newspapers, and his actions, he is inviting surfers
14 from outside our community to be escorted to the surf." (*Id.*)

15 Chief Kepley softened his get-tough-on-crime message following this
16 backlash. (*See* Decl. Otten, Ex. 1 at 61:16-19.) He "didn't want to jeopardize any
17 preexisting relationships or relationships we may form in the future [in order] to
18 gain compliance," and decided it would be better to "work collaboratively" with the
19 Bay Boys. (*Id.* at 86:4-87:1.)

20 Chief Kepley's "collaborative" message was in line with the City's historical
21 symbiotic relationship with the Bay Boys. Many current and former City police
22 officers grew up with Bay Boys. (Decl. Otten, Exs. 15 at 243-244 (Blakeman
23 acknowledging he has known a number of police officers for many years) & 17
24 (Charlie Mowat explaining he "[grew] up with a number of the fine police officers
25 of PVE").) Defendant Blakeman's personal cell phone is provided by the City,
26 though he is not a City employee. (Decl. Otten, Ex. 15 at 15:9-13.) And, when the
27 City surreptitiously planned an undercover surfing operation at Lunada Bay in
28 January 2016, word of the operation leaked to Bay Boy Michael Thiel. (Decl.

1 Otten, Ex. 1 at 42-43.) Only four or five City employees were aware of the
2 undercover operation. (Decl. Otten, Ex. 1 at 43.) Yet, the City Manager received a
3 visit from Mr. Thiel – the same individual who texted with Defendant Johnston and
4 others when this lawsuit was filed – asking why the police were planning an
5 undercover operation the next day at Lunada Bay. (See Decl. Otten, Exs. 1 at 42 &
6 16 at 139-141.) The operation was canceled. (*Id.* at Ex. 1 at 42:22-23.)

7 Next, visitors who endure and report harassment to the police receive
8 indifference, a platitude, or no response. (Decl. Young, ¶ 12; *see also* Decl. Conn, ¶
9 8.) Other reports of harassment receive a passive investigation without any follow
10 up. (See, e.g., Decls. Innis, ¶ 6; Bacon, ¶ 10; Carpenter, ¶ 15; Gero, ¶ 12.)
11 Eventually, victims stop reporting the crimes. (Decl. Young, ¶ 12; *see also* Decl.
12 Conn, ¶ 8.) The City police then claim there's nothing they can do because people
13 are not reporting the Bay Boys' acts and say "[w]ith no victim, there is no crime."
14 (See Decl. Otten, Ex. 10.)

15 Visitors who dare complain about the Bay Boys to the City police may find
16 themselves the target of a police investigation for alleged wrongdoing or are
17 blatantly ignored. (Decls. Sisson, ¶ 8; Wright, ¶ 22.) When Ricardo Pastor called
18 the police to report Bay Boys' harassment, the police officer asked where he was
19 from. Upon learning that Mr. Pastor lived in Manhattan Beach, the officer told him
20 "maybe you shouldn't be surfing here" and said that he would not take a report
21 because "we're not required to carry stationary." (Decl. Pastor, ¶ 6.)

22 Even when officers observe wrongdoing by the Bay Boys, they ignore it.
23 Although officers were present nearby and witnessed Plaintiff Reed being verbally
24 accosted by Bay Boy David Mello, they did not intervene to stop him. (Decl. Reed,
25 ¶ 11.) Instead, they waited for Mello to finish his verbal assault before approaching
26 Reed to ask her "what was going on." (*Id.*, ¶ 13; *see also* Decls. Spencer, ¶ 24;
27 MacHarg, Ex. 1 (police acknowledged Defendant Sang Lee committed a battery in
28 their presence but did not intervene).)

1 Sometimes, City police overtly act to exclude visitors, telling them they "are a
2 long way from home," "it's getting late so you need to leave," or telling them to
3 "walk towards Torrance." (Decl. Gersch, ¶¶ 7-8; *see also*, Decl. Carpenter, ¶ 15.)
4 City police will conduct traffic stops to ask people if they are lost or what business
5 they have in Palos Verdes. (Decl. Will, ¶ 9.)

6 City Police also dissuade victims from pursuing legal remedies against the
7 Bay Boys, stressing the civil liability they could face since residents of Lunada Bay
8 are wealthy and can afford to hire good lawyers. (Decl. Reed, ¶¶ 11-14.)

9 III. ARGUMENT

10 This action is primarily about equitable relief. Plaintiffs ask the Court to
11 certify a class pursuant under FRCP 23(b)(2) and FRCP 23(b)(3). Damages are
12 incidental, and do not require individualized determination. The class consists of:

13 All visiting beachgoers to Lunada Bay who do not live in Palos Verdes
14 Estates, as well as those who have been deterred from visiting Lunada
15 Bay because of the Bay Boys' actions, the Individual Defendants'
16 actions, the City of PVE's actions and inaction, and Defendant Chief of
17 Police Kepley's action and inaction, and subsequently denied during the
18 Liability Period, and/or are currently being denied, on the basis of them
19 living outside of the City of PVE, full and equal enjoyment of rights
20 under the state and federal constitution, to services, facilities,
21 privileges, advantages, and/or recreational opportunities at Lunada Bay.
For purposes of this class, "visiting beachgoers" includes all persons
who do not reside in the City of PVE, and who are not members of the
Bay Boys, but want lawful, safe, and secure access to Lunada Bay to
engage in recreational activities, including, but not limited to, surfers,
boaters, sunbathers, fisherman, picnickers, kneeboarders, stand-up
paddle boarders, boogie boarders, bodysurfers, windsurfers, kite
surfers, kayakers, walkers, dog walkers, hikers, beachcombers,
photographers, and sightseers.

22 As a civil rights class action that primarily seeks equitable relief, Plaintiffs' Motion
23 for Class Certification should be granted.

24 A. The Class Satisfies All Requirements of Rule 23(a).

25 FRCP 23 "creates a categorical rule entitling a plaintiff whose suit meets the
26 specified criteria to pursue his claim as a class action." *Shady Grove Orthopedic*
27 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). For a named plaintiff to
28 meet the requirements for class certification under FRCP 23, the court must find:

1 "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3)
2 the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can
3 adequately protect the interests of the class." *Hanon v. Dataproducts Corp.*, 976
4 F.2d 497, 508 (9th Cir. 1992). For class actions in the civil rights field, "the general
5 rules on burden of proof must not be applied rigidly or blindly. The court too bears
6 a great responsibility to insure the just resolution of the claims presented . . ." *Jones*
7 *v. Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975).

8 While some inquiry into the substance of a case may be necessary to ascertain
9 satisfaction of the commonality and typicality requirements of Rule 23(a), it is
10 improper to advance a decision on the merits to the certification stage. *Moore v.*
11 *Hughes Helicopters, Inc.*, 708 F.2d 475, 480 (9th Cir. 1983); *see also Amgen Inc. v.*
12 *Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194-95 (2013).

13 **1. The Class is Sufficiently Numerous.**

14 The requirement that a class be "numerous" under Rule 23(a)(1) "is met if the
15 class is so large that joinder of all members is impracticable." *Evon v. Law Offices*
16 *of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012). Here, numerosity is
17 satisfied. There are more than 30,000,000 residents in Southern California, more
18 than 230,000,000 day visitors to California beaches, more than 3,000,000 surfers in
19 the United States, and an estimated 1,000,000 surfers in Southern California, yet
20 because of localism at Lunada Bay and the City's complicity, fewer than 100 people
21 regularly surf that beach. (Decl. King, ¶¶ 9-10.) But, there should minimally be
22 somewhere between 20,000 and 25,000 annual surfers plus other hikers and visitors.
23 (*Id.*, ¶ 19.) Thus, this beach-going class is minimally more than 20,000.

24 **2. There Are Questions of Fact and Law Common Within the Class
25 That Satisfy Rule 23(a)(2).**

26 Class certification is appropriate where "there are questions of law or fact
27 common to the class." Fed. R. Civ. P. 23(a)(2). "Plaintiffs need not show that every
28 question in the case, or even a preponderance of questions, is capable of classwide

1 resolution. So long as there is 'even a single common question,' a would-be class
2 can satisfy the commonality requirement of Rule 23(a)(2)." *Wang v. Chinese Daily*
3 *News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013); see also *Wal-Mart Stores, Inc. v.*
4 *Dukes*, 564 U.S. 338, 359 (2011) (single common question sufficient to establish the
5 requisite commonality to satisfy Rule 23(a)(2)).

6 The commonality requirement under Rule 23(a)(2) "has been construed
7 permissively. All questions of fact and law need not be common to satisfy the rule.
8 The existence of shared legal issues with divergent factual predicates is sufficient, as
9 is a common core of salient facts coupled with disparate legal remedies within the
10 class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

11 Here, the common questions of law and fact are extensive, as set forth in the
12 Complaint. See Complaint, Dkt. No. 39-2, ¶ 33 (listing 16 separate questions of fact
13 and law common to the class). Common questions of fact and law predominate the
14 inquiry into all of the Class Members' claims, including, most notably, "Whether the
15 Bay Boys, through unlawful conduct, have claimed the Lunada Bay area as their
16 'turf' and attempt to unlawfully dissuade beachgoers that live outside of Palos
17 Verdes Estates from recreating in the park, bluff, beach, and ocean areas in and
18 around Lunada Bay" and "Whether, acting under color of law, by its policies,
19 customs, and/or longstanding practices, and in deliberate indifference towards
20 Plaintiffs' rights under state and federal law, [the City] has, under the laws of the
21 United States and/or the United States Constitution, unlawfully excluded Plaintiffs,
22 and persons like them, from their right to recreational opportunities at Palos Verdes
23 Estates' parks, beaches, and access to the ocean."

24 The many victim declarations submitted with this brief demonstrate that all
25 had similar experiences when they attempted to recreate at Lunada Bay. In short, by
26 the concerted efforts of the Bay Boys and each Individual Defendant, combined
27 with City complicity, Plaintiffs and the class are barred from using Lunada Bay.

28 / / /

1 **3. The Representative Plaintiffs' Claims are Typical of the Class.**

2 Rule 23(a)(3) further provides that class certification is appropriate where
3 "the claims or defenses of the representative parties are typical of the claims or
4 defenses of the class." Fed. R. Civ. P. 23(a)(3). The Rule 23(a)(3) "typicality"
5 requirement is evaluated under "permissive standards" whereby representative
6 claims are considered "typical" if they "are reasonably co-extensive with those of
7 absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d
8 at 1020.

9 Typicality is adequately shown where, as here, "other members have the same
10 or similar injury, whether the action is based on conduct which is not unique to the
11 named plaintiffs, and whether other class members have been injured by the same
12 course of conduct." *Hanon*, 976 F.2d at 508 (citing *Schwartz v. Harp*, 108 F.R.D.
13 279, 282 (C.D.Cal.1985)). "The purpose of the typicality requirement is to assure
14 that the interest of the named representative aligns with the interests of the class."
15 *Id.* (citing *Weinberger v. Thornton*, 114 F.R.D. 599, 603 (S.D.Cal.1986)). "Thus,
16 '[t]ypicality refers to the nature of the claim or defense of the class representative,
17 and not to the specific facts from which it arose or the relief sought.'" *Parsons v.*
18 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting *Hanon*, 976 F.2d at 508).
19 Moreover, "[t]he commonality and typicality requirements of Rule 23(a) tend to
20 merge. Both serve as guideposts for determining whether under the particular
21 circumstances maintenance of a class action is economical and whether the named
22 plaintiff's claim and the class claims are so interrelated that the interests of the class
23 members will be fairly and adequately protected in their absence." *Gen. Tel. Co. of*
24 *Sw. v. Falcon*, 457 U.S. 147, 178 n.13 (1982).

25 Here, Plaintiffs and all of the Class Members have been harmed the same way
26 by the actions of the Bay Boys and the complicit conduct of the City and its police.
27 All have been (and are) deprived the opportunity to enjoy the recreational
28 opportunities and unique natural beauty of Lunada Bay by virtue of the unlawful,

1 abusive conduct of the Bay Boys.

2 The City and its police, including Chief Kepley, show their complicity in this
3 conduct by consistently and uniformly turning a blind eye to the Bay Boys' reign
4 over Lunada Bay despite knowing that it persists and is unlawful.

5 **4. The Representative Plaintiffs and Their Counsel are Adequate
6 Representatives of the Class.**

7 To satisfy Rule 23(a)(4), "the named representatives must appear able to
8 prosecute the action vigorously through qualified counsel, and second, the
9 representatives must not have antagonistic or conflicting interests with the unnamed
10 members of the class." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512
11 (9th Cir. 1978); see also *Hanlon*, 150 F.3d at 1020 ("[r]esolution of two questions
12 determines legal adequacy: (1) do the named plaintiffs and their counsel have any
13 conflicts of interest with other class members and (2) will the named plaintiffs and
14 their counsel prosecute the action vigorously on behalf of the class?")

15 After substantial investigation, Class Counsel brought this action on behalf of
16 the Plaintiffs and the class for the purpose of returning Lunada Bay to the public,
17 and Class Counsel intends to prosecute this action vigorously in furtherance of this
18 objective. (Decl. Franklin, ¶ 7; Decl. Otten, ¶ 25.) Class counsel have no conflicts
19 with unnamed members of the class here. (*Id.*) Nor do the named plaintiffs in this
20 matter have any conflicts with unnamed members of the class. (*Id.*) Plaintiffs,
21 Class Counsel, and the class all have the same common goal in this matter:
22 Stopping the Bay Boys from continuing to misappropriate the public property of
23 Lunada Bay for their own private use through unlawful and otherwise socially
24 unacceptable means. Further, they want the City and its law enforcement agencies
25 to enforce existing laws and protect the safety and security of *all* members of the
26 public who wish to enjoy Lunada Bay, regardless of their residency, income, gender,
27 race, or other protected category, and to ensure that this unique coastal area will be
28 available for public use and enjoyment, as it should be, and as it always should have

1 been. (Decl. Spencer, ¶ 32; Decl. Reed, ¶ 40; Decl. Slatten, ¶¶ 12-13.)

2 Moreover, on behalf of the class, Class Counsel and the Representative
3 Plaintiffs seek incidental damages that can be established on a non-individualized
4 basis to compensate for the losses suffered at the hands of the Bay Boys, the City,
5 and Chief Kepley. Finally, Class Counsel are experienced, well-qualified class
6 action attorneys with sufficient resources to litigate this matter effectively. (Decl.
7 Franklin, ¶¶ 2-5, 7; Decl. Otten, ¶ 1.) The interests of the classes, and each
8 individual member therein, will be well-represented in this matter.

9 **5. Ascertainability is not Required, Yet Met Here Nonetheless.**

10 Ascertainability is not required for class certification under Rule 23(b)(2).
11 *P.P. v. Compton Unified Sch. Dist.*, No. CV-15-3726-MWF (PLAx), 2015 WL
12 5752770 (C.D. Cal. Sept. 29, 2015) at *23; *In re Yahoo Mail Litig.*, No. 13-CV-
13 04980-LHK, 2015 WL 3523908 at *16 (N.D. Cal. May 26, 2015). Even on
14 damages classes under Rule 23(b)(3), the Ninth Circuit has not explicitly recognized
15 ascertainability as a requirement for class certification in a published decision. And
16 under Rule 23(b)(3), ascertainability is not a formal prerequisite to certification.
17 *Red v. Kraft Foods, Inc.*, No. CV 10-1028-GW (AGRx), 2012 WL 8019257, at *6
18 (C.D. Cal. Apr. 12, 2012) (“A lack of ascertainability alone will generally not scuttle
19 class certification.”).

20 Still, here, the class is ascertainable. A class "need not be so ascertainable
21 that every potential member can be identified at the commencement of the action."
22 *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998) (quotation
23 omitted). Rather, all that is necessary is that "the general outlines of the
24 membership of the class are determinable at the outset of the litigation." *Id.* Thus, a
25 class is sufficiently ascertainable if its description is "definite enough so that it is
26 administratively feasible for the court to ascertain whether an individual is a
27 member." *Id.*; *Brazil v. Dole Packaged Foods, LLC*, 2014 WL 2466559 (N.D. Cal.
28 May 30, 2014) ("In this Circuit, it is enough that the class definition describes a set

1 of common characteristics sufficient to allow a prospective plaintiff to identify
2 [herself as a member of the class."]); *see also, Aguirre v. AmScan Holdings, Inc.*,
3 234 Cal.App.4th 1290 (2015) (Class was, in fact, ascertainable because (1) the class
4 definition contained a set of "common characteristics" that would allow class
5 members to self-identify themselves, and (2) because the plaintiff had suggested an
6 objective method for identifying class members.)

7 Here, the class is well-defined: Surfers and other visiting beachgoers who are
8 not from Palos Verdes Estates and who have been deterred from enjoying Lunada
9 Bay because of the localism problem created by the Bay Boys and the City. If a
10 beachgoer seeks to opt out of the damage claim after self-identifying, he or she can
11 do so.

12 **B. The Court Should Also Certify the Class Pursuant to Rule 23(b)(3) to
13 Pursue Monetary Damages.**

14 Certification under Rule 23(b)(3) is also proper because "the questions of law
15 or fact common to class members predominate over any questions affecting only
16 individual members, and that a class action is superior to other available methods for
17 fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As
18 with incidental damages under Rule 23(b)(2), the Plaintiffs seek precisely the same
19 thing: Compensation for the value of the public asset that has been misappropriated
20 from them for decades. Being conservative, "the estimate of the recreational value
21 of the surfing at Lunada Bay is between \$50 to \$80 per person per visit [or denied
22 visit] during the high season." (Decl. King, ¶ 19.)

23 **1. The Class Members Have Little or No Interest in Controlling the
24 Prosecution of Separate Actions.**

25 Rule 23(b)(3)(A) provides that in considering whether certification of a class
26 pursuant to Rule 23(b)(3) is appropriate, courts should consider "the class members'
27 interests in individually controlling the prosecution or defense of separate action."
28 Fed. R. Civ. P. 23(b)(3)(A). Additionally, Rule 23(b)(3)(B) provides that courts

1 should also consider "the extent and nature of any litigation concerning the
2 controversy already begun by or against class members." Fed. R. Civ. P.
3 23(b)(3)(B).

4 Here, these factors weigh heavily in favor of certifying under Rule 23(b)(3),
5 as no class member has shown any interest in maintaining an individual action
6 arising from the Bay Boys' ongoing conduct. Few are willing to stand up to the Bay
7 Boys and the City. Indeed, many victims of the Bay Boys' harassment are too afraid
8 to come forward. (*See*, Decl. Otten, ¶ 23.)

9 **2. This Forum is Ideal For Resolving the Issues Raised in This
10 Litigation.**

11 In the course of evaluating whether a class should be certified under Rule
12 23(b)(3), courts are also asked to consider "the desirability or undesirability of
13 concentrating the litigation of the claims in the particular forum." Fed. R. Civ. P.
14 23(b)(3)(C). This forum is ideal for resolving claims brought by the 23(b)(3) class.
15 The actions giving rise to the claims all take place within the Central District of
16 California. Yet, the claims implicate the Constitutional rights of citizens throughout
17 the United States. (Decl. King, ¶¶ 8, 9, 15, & 17.) This Court is well-equipped to
18 adjudicate this matter and provide justice to all parties involved, including the
19 named Plaintiffs and all Rule 23(b)(3) Class members.

20 **3. Managing the Class Will Not Be Unduly Difficult.**

21 Finally, Rule 23(b)(3) identifies "the likely difficulties in managing a class
22 action" as a matter pertinent to class certification. Fed. R. Civ. P. 23(b)(3)(D).
23 Courts find that this factor weighs in favor of class certification where, as here, "a
24 class action is superior to other available methods for the fair and efficient
25 adjudication" and "questions of law and fact common to all potential class members
26 predominate over any questions affecting only individual members." *Ortega v. J.B.
27 Hunt Transp., Inc.*, 258 F.R.D. 361, 371 (C.D. Cal. 2009).

28 Here, despite the large size of the class, management of this action is within

1 this Court's capabilities. The class will consist of individuals who have been
2 deterred from visiting Lunada Bay by the Bay Boys' conduct and the City's enabling
3 of such conduct through deliberate indifference and complicity. The legal standards
4 applicable to each member of the class will be the same – regardless of the class
5 member's state of origin, all of the acts complained of took place in California and
6 are subject to California law. Damage calculation is reasonably simple, and
7 identifying members of the class will be no more difficult than a typical class action
8 matter. Notice can be provided through publicity on social media sites, ocean-
9 oriented sites, newspapers, non-profit advocacy group email lists, and the California
10 Coastal Commission. The class action procedural vehicle is the superior method
11 (and, realistically, the only method) of addressing the claims of all under Rule
12 23(b)(3).

13 **IV. CONCLUSION**

14 This lawsuit seeks to stop illegal bullying that affects thousands of
15 beachgoers, and can positively affect many thousands more by giving them access
16 to open space and nature in densely-populated Los Angeles County. The harm
17 suffered by the named Plaintiffs is the same as that of the class members. And so is
18 the equitable relief sought, which is making Lunada Bay truly a public beach.
19 Plaintiffs ask the Court to grant their motion for class certification under Rules
20 23(b)(2) and 23(b)(3), and to appoint Hanson Bridgett LLP and Otten Law PC as
21 class counsel.

22 DATED: December 29, 2016

HANSON BRIDGETT LLP

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25

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